

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOY MACCHARULO & DOLORES KUCHARCZYK,
Co-Administratrix of the Estate of FRANK
KUCHARCZYK, deceased,

CASE NO. 08 CV 00301

Plaintiffs,
-against-

GLENN GOULD, COMMISSIONER OF THE NEW
YORK STATE DEPARTMENT OF CORRECTIONAL
SERVICES; MICHAEL F. HOGAN, COMMISSIONER
OF THE NEW YORK STATE OFFICE OF MENTAL
HEALTH, DONALD SAWYER, EXECUTIVE DIRECTOR
OF CENTRAL NEW YORK PSYCHIATRIC CENTER;
SUPERINTENDENT WILLIAM MAZZUCA, FISHKILL
CORRECTIONAL FACILITY; SUPERINTENDENT JOHN
BURGE, AUBURN CORRECTIONAL FACILITY;
SUPERINTENDENT WILLIAM E. PHILLIPS,
GREENHAVEN CORRECTIONAL FACILITY; JEFFREY
COLELLA; GARY HERRMAN; JUSTIN THOMAS;
RONALD NELSON; THOMAS MILLER; DR. MITCHELL
LANGBART; JOHN HENDERSON, AUBURN NURSE R.
SMITH (NURSE 264); FISHKILL NURSE HOMELL OR
HOWELL (RN#2); FISHKILL NURSE 407, FISHKILL
NURSE B. FURRORN (EXT. 6111), DR. R. KAMI;
ROBERT RIZZO; DR. O. KLEIN; CORRECTIONAL
OFFICER J. VITO; CORRECTIONAL OFFICER CHURNS
(#0529); CORRECTIONAL OFFICER V. LOPICCOLO;
CORRECTIONAL OFFICER CROCE; CORRECTIONAL
OFFICER ROBERTS; CORRECTIONAL OFFICER T.
MILLER; RN FRED BELANGER, RN SARA MUETZEL;
AS OF YET UNIDENTIFIED CORRECTIONAL
OFFICERS FROM FISHKILL CORRECTIONAL FACILITY;
AS OF YET UNIDENTIFIED MEDICAL PERSONNEL
FROM FISHKILL AND GREEN HAVEN CORRECTIONAL
FACILITIES; NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES; NEW YORK STATE OFFICE
OF MENTAL HEALTH; CENTRAL NEW YORK
PSYCHIATRIC CENTER; THE STATE OF NEW YORK.

ANSWER
JURY DEMANDED

Defendants.

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S I R S :

Defendant, OSCAR KLEIN, M.D. s/h/a DR. O. KLEIN, by his attorneys, GERSPACH SIKOSCOW LLP, answers the plaintiff's Amended Complaint as follows, upon information and belief:

PARTIES AND JURISDICTION

1. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated "1", "2", "31", "32" and "33".
2. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated "3", "4", "5", "6", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "23", "24", "25", "26", "23" (misnumbered), "24", (misnumbered), "25" (misnumbered), "26" (misnumbered), "27", "28", "29" and "30", and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

FACTS

- 3, Repeats, reiterates and realleges each and every response to paragraphs "1" through "33" of the Amended Complaint as if fully set forth herein, as his response to paragraph "34" of the Amended Complaint.

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated "35", "36", "37", "38", "39", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55", "56", "57", "58", "59", "60", "61", "62", "63", "63" (misnumbered), "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76", "77", "78", "81", "82", "83", "84", "85", "86", "87", "88", "89", "90", "91", "92", "93", "94", "95" and "96", and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

5. Denies each and every allegation contained in the paragraph of the Amended Complaint designated "79" and "80" with reference to OSCAR KLEIN, M.D.; and denies knowledge or information sufficient to form a belief as to defendants Robert Rizzo and Dr. Kami.

COUNT I/COUNT II – ADA AND SECTION 504

6. Repeats, reiterates and realleges each and every response to paragraphs "1" through "96" of the Amended Complaint as if fully set forth herein, as his response to paragraph "97" of the Amended Complaint.

7. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the Amended Complaint designated "98" and "99", and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

8. Denies each and every allegation contained in the paragraph of the Amended Complaint designated "100" with reference to OSCAR KLEIN, M.D., and denies knowledge or information sufficient to form a belief as to all other defendants.

COUNT III – FEDERAL CIVIL RIGHTS ACT – 42 U.S.C. § 1983

9. Repeats, reiterates and realleges each and every response to paragraphs "1" through "100" of the Amended Complaint as if fully set forth herein, as his response to paragraph "101" of the Amended Complaint.

10. Admits OSCAR KLEIN, M.D. was a State actor, but denies knowledge or information sufficient to form a belief as to all other allegations contained in the paragraph of the Amended Complaint designated "102", and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

11. Denies each and every allegation contained in the paragraphs of the Amended Complaint designated "103", "104", "106" and "107" with respect to OSCAR KLEIN, M.D.; denies knowledge or information sufficient to form a belief as to all other defendants; and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

12. Plaintiff's Verified Complaint does not contain a paragraph numbered "105", and as such, is misnumbered.

DAMAGES

13. Repeats, reiterates and realleges each and every response to paragraphs "1" through "107" of the Amended Complaint as if fully set forth herein, as his response to paragraph "108" of the Amended Complaint.

14. Denies each and every allegation contained in the paragraph of the Amended Complaint designated "109" with respect to OSCAR KLEIN, M.D.; denies knowledge or information sufficient to form a belief as to all other defendants; and begs leave to refer all questions of law to the Court and all questions of fact to the trier of fact.

PRAAYER FOR RELIEF

15. Repeats, reiterates and realleges each and every response to paragraphs "1" through "109" of the Amended Complaint as if fully set forth herein, as his response to paragraph "110" of the Amended Complaint.

16. Denies each and every allegation contained in the paragraph of the Amended Complaint designated "111".

AS AND FOR THE FIRST AFFIRMATIVE DEFENSE

17. Defendant claims the protections, benefits and limitations on liability as set forth in Article 14 of the C.P.L.R.

AS AND FOR THE SECOND AFFIRMATIVE DEFENSE

18. Defendant claims the protections, benefits and limitations on liability as set forth in Article 16 of the C.P.L.R.

AS AND FOR THE THIRD AFFIRMATIVE DEFENSE

19. Whatever injuries the decedent may have sustained at the time and place alleged in the Amended Complaint were caused in whole or in part, or were contributed to by the culpable conduct and want of care on the part of the decedent and without any negligence or fault or want of care on the part of the answering defendant.

AS AND FOR THE FOURTH AFFIRMATIVE DEFENSE

20. Upon information and belief, the alleged cause of action stated in the Amended Complaint was commenced in violation of the applicable statute of limitations and is therefore barred.

AS AND FOR THE FIFTH AFFIRMATIVE DEFENSE

21. The answering defendant reserves the right to claim the benefits and limitations of liability pursuant to General Obligations Law § 15-108.

WHEREFORE, defendant OSCAR KLEIN, M.D. demands judgment dismissing the Amended Complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
May 2, 2008

Yours, etc.,

GERSPACH SIKOSCOW LLP

By:



ALEXANDER SIKOSCOW

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